IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR

BENCH, JAIPUR

ORDER

::

S.B. Sales Tax Revision Petition No. 57/2005

State Level Screening Committee & Ors.

Versus

M/s. Modern Thread (India) Ltd., Jaipur

Date of order :: September 19,2007

REPORTABLE

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. R.B. Mathur and Mr. Amit Ratnawat for the petitioner-Revenue
Mr. Sunil Nath for Mr. Paras Kuhad for the respondent-assessee

BY THE COURT:

1. This revision petition filed by the Revenue is directed against the order of the Tax Board dated 21.07.2004 allowing the

assessee's appeal against the order of the State Level Screening Committee (for short, 'SLSC', hereinafter) dated 05.03.2002, whereby the SLSC rejected the case of the respondent-assessee for grant of benefit under the Sales Tax Incentive Scheme, 1989 (for short, 'the Scheme of 1989', hereinafter) in the category of expansion.

2. The facts giving rise to the present revision petition in brief are as follows: The assessee applied for grant of benefit under the Scheme of 1989 in the expansion category claiming that it had installed additional capacity of 25344 spindles for manufacture of synthetic blended gray and dyed yarn, for which they had filed an IEM with Ministry of Industry, Government of India, which was acknowledged on 17.04.1995 and before adding the capacity by way of 25344 spindles under the expansion program, the unit had already installed 18128 spindles, which was 72.51% of its original

licensed capacity of 25000 spindles. The said application filed for grant of benefit by the assessee on 19.09.1996, was rejected by the SLSC in the first instance on 20.06.1997. Against the said order of 20.06.1997, the assessee filed its appeal before the Tax Board numbering Appeal No. 813/97/ST/Jaipur, which came to be allowed by the Tax Board vide its order dated 01.08.1998. The Tax Board relied upon the decision of the Tax Board in another matter of M/s. HEG Ltd., Rishabhdev, District Udaipur and M/s. Super Syncotex (India) Ltd, wherein it was held by the Tax Board that to become eligible for the benefit under the expansion category, 85% of the capacity required to be satisfied for eligibility in expansion category refers to the **installed capacity** of the assessee unit and not the **registered/licensed capacity**. Despite the appeal of the assessee having been allowed by the Tax Board on 01.08.1998, the SLSC or the competent authority of the Department did not issue any eligibility certificate in favour of the

assessee. However, on the strength of the said decision in its favour, the assessee started to avail the benefit under the said incentive scheme. The Revenue brought up the matter in the case of M/s. Super Syncotex (India) Ltd. before this court against the decision of the Rajasthan Taxation Tribunal and this court in *Commissioner, Commercial Taxes, Rajasthan & Anr. Vs. Super Syncotex (India) Ltd. & Ors.* reported in (2003) 130 STC 186 (Raj.) held in favour of the assessee that expression "licensed/registered capacity" under clause 2(f) of the Schemes of 1987 and 1989 can have reference only to the existing installed capacity and not to the maximum permissible capacity stated in the license. It would be appropriate to reproduce para 34 to 37 of the aforesaid judgment of the Division Bench of this court in the case of Super Syncotex (India) Ltd. :-

> *"34. Therefore, in the totality, all the schemes were in furtherance of the same object, firstly by way of 1985 Dispensations and thereafter successive schemes called as Incentive/Deferment Schemes, 1987 or New*

Incentive/Deferment Scheme of 1989 and Incentive/Deferment Scheme of 1998 extending different types of benefits under the schemes depending on the option of the industrial units desirous of availing of such benefits. In the context of the schemes in question and its object, the expression "licenced/registered capacity" under clause 2 (f) of the respective Schemes of 1987 and 1989 respectively, can have reference only to the existing installed capacity with regular expansion, in the ordinary conduct of business from day to day under the licensed or installed capacity as registered under IDR Act at the time when benefit of expansion is claimed. Yardstick of increase in fixed capital investment and increase in production which may qualify it for a "substantial expansion" has been laid under the scheme as noticed above. If any other view is taken, then it must be held that until 1998 vast majority of industries, which were not intended to be excluded shall remain excluded merely because at the time when they had applied for an industrial licence under IDR Act, had projected a futuristic vision of much larger capital outlay with much larger capacity notwithstanding immediate project was only for much smaller installed capacity with moderate capital outlay and future expansion depended on obtaining a licence for any substantial expansion.

35. It is also apparent from the licences issued in the case of each of the applicants that while entering the details about the installed capacity, they were required to show installed capacity in a phased manner. If that be so, it must be further noticed that as and when they wanted any further substantial addition in terms of section 13(1)(d) of the IDR Act in their actual installed capacity even under the licence, they were again required to apply for licence for substantial expansion notwithstanding such capacity was within the licensed capacity entered in the licence.

36. Moreover, it may be noticed that when Incentive Scheme, 1987 was first introduced with effect from April 1, 1987, it was operative only up to March 31, 1992. Thereafter all extension of scheme were made by different notifications issued from time to time. At the time of even first extension of operative period, the necessity of licence for establishing a new industry or expansion or diversification had ceased to exist and there remained to nexus with the "licensed capacity" in its technical sense suggested by Revenue with object sought to be achieved with the continued incentive/deferment schemes. Therefore, the scheme is required to be looked into the light of changed circumstances at least since extension of the existing scheme from time to time until March 31, 1998 and ultimately while

continuing incentive/deferment to expansions also along with other units with effect from April 1, 1998 it was clarified the position by using the right phrase in terms of changed industrial policy whereunder licensing was not required.

37. We are, therefore, in agreement with the Tribunal that the State Level Screening Committee was in error in not considering the applicants in each case to be eligible merely because increase in their production did not correspond to the proposed installed capacity entered in their licences issued under IDR Act. There is not dispute that as against installed capacity and existing fixed capital investment, all the applicants fulfilled the criterion under the schemes under which they applied."

3. Thus, the ground taken for rejection of the case of the respondent assessee for grant of benefit under the Incentive Scheme stood negatived by the Division Bench of this court in the aforesaid judgment. The learned counsel for the Revenue informs that even SLP against this judgment was rejected by the Hon'ble Supreme Court as also noted by the Tax Board in the impugned

order dated 21.07.2004. Thus, the issue that the respondent assessee satisfied the condition of achieving 85% of the installed capacity by way of expansion program when it has installed 25344 spindles as against 18128 spindles already installed by it, is required to be resolved in favour of the respondent assessee in the light of the aforesaid judgment of the Division Bench of this court in the case of Super Syncotex (India) Ltd. (supra).

4. Learned counsel for the Revenue, however, tried to contend that the rejection of the case by the SLSC on 05.03.2002 was still justified because the respondent assessee had defaulted in repayment of loan worth Rs. 55.15 lacs given by RIICO and Rs. 11.69 lacs as interest free loan given by the State Government. He referred to clause 5(i) of the Incentive Scheme, 1989 which is reproduced hereinbelow for ready reference :-

> *"(i) If after affording an opportunity of being heard to the unit, the appropriate Screening Committee is satisfied that* ***after two years of***

> ***commencement*** *of commercial production, the unit had made two defaults in making repayments of the loans obtained from the financial institutions of the State, the benefits under the Scheme* ***shall stand withdrawn*** *from the date of second default."*

5. He submits that since the assessee was informed by the Additional Director of Industries vide letter dated 06.04.1999 about the outstanding dues of of RIICO and the State Government and that the assessee had defaulted in making repayment of the same, the SLSC was justified in rejecting the case of the respondent assessee and not issuing the eligibility certificate under the Scheme of 1989 to the the respondent assessee in view of clause 5(i) of the Scheme. He relied upon the decision of the Hon'ble Supreme Court in the case of State Level Committee & Anr. Vs. Morgardshammar India Ltd. reported in (1996) 101 STC 1 (SC).

6. On the side opposite, Mr. Sunil Nath, appearing for the

respondent assessee urged that not only the SLSC was bound to issue the eligibility certificate in pursuance of the Tax Board's order dated 01.08.1998 earlier allowing the appeal of the assessee against the earlier decision of the SLSC dated 28.02.1997, wherein the Tax Board had specifically directed the SLSC to issue eligibility certificate to the assessee within a period of two months, but the SLSC kept the matter pending with it for almost four years and thereafter again chose to reject the same on the ground of limit of 85% of registered/licensed capacity not having been achieved by the respondent assessee and additionally on the ground of default in making repayment of the loan of RIICO and State Government and therefore, the assessee had to again approach the Tax Board by way of an appeal, which again came to be allowed by the Tax Board by the order impugned in the present revision petition dated 21.07.2004.

7. He further submitted that clause 5(i) if the Incentive Scheme, 1989 merely permits the competent screening committee to withdraw the benefit under the incentive scheme from the date of second default in repayment of loans obtained from the financial institutions of the State, but there is no such occasion in the present case as the eligibility certificate itself had never been issued in favour of the respondent assessee and therefore, there is no question of withdrawal of the same. He also drew attention of the court towards the first part of clause 5(i) of the Scheme, which puts a moratorium of two years from the date of commencement of commercial production for invoking the said clause 5(i) to withdraw such benefit from the assessee unit even if there is a default in the repayment of loans. He submitted that the provision of clause 5(i) is to make a deterrent provision to prohibit the assessee from making any default in the repayment of the loans of the State and its financial institutions, but the same

cannot run over the very scheme of grant of exemption from sales tax under the said Incentive Scheme, 1989, if other eligibility conditions and criteria, viz. of making eligible fixed capital statement in the State of Rajasthan, were admittedly fulfilled by the assessee unit. He submitted that though there were defaults in repayment of the loans of RIICO and the State Government and even the production activity of the respondent unit had to be discontinued after July, 1999 due to variety of reasons, but later on the unit was registered as a BIFR unit under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 and unit also was declared as a Relief Undertaking by the State Government. He, therefore, urged that despite the said default in the repayment of loan, the same could not empower the SLSC to refuse the issuance of eligibility certificate in the light of the decisions of the Tax Board which were binding upon the SLSC. He, therefore, prayed for rejection of the revision petition filed by

the Revenue.

8. I have heard learned counsels and perused the provisions of the Scheme and the judgments cited at the bar. It is no doubt true that the provisions of the taxing statutes have to be construed strictly in accordance with various decisions of the Apex Court, but such strict construction definitely has to be based on facts and situation obtaining in each case. The Hon'ble Supreme Court in the judgment cited by the learned counsel for the Revenue himself has relied on various decisions of the Apex Court on earlier occasions and amongst them were the case of *Mangalore Chemicals & Fertilizers Limited Vs. Deputy Commissioner of Commercial Taxes* reported in (1991) 83 STC 234 (SC) : (1992) Supp 1 SCC 21 and the case of *Collector of Central Excise Vs. Parle Exports (P.) Ltd.* reported in (1989) 75 STC 105 (SC) : (1989) 1 SCC 345. The Hon'ble Supreme Court in the above case has

observed under :-

> *"While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided.*
>
> *The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the Legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plaint words of the statute. ....."*

Further quoting from ***Union of India Vs. Wood Papers Ltd.***

reported in (1991) 83 STC 251 : (1990) 4 SCC 256, the Hon'ble

Supreme Court observed as under :-

> *"..... truly, speaking, liberal and strict construction of an exemption provision are to be invoked* ***at different stages of interpreting it****. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but* ***once ambiguity or doubt about applicability is lifted*** *and the subject falls in the notification then* ***full***

play should be given *to it and it calls for a wider and liberal construction. ....."*

Summarizing the legal position very succinctly and quoting from ***Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad*** reported in (1994) Supp 3 SCC 606, the Hon'ble Supreme Court observed in Morgardshammar's as under :-

"16. We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals [1991] 83 STC 234 and in Union of India v. Wood Papers [1991] 83 STC 251 referred to therein – represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee – assuming that the said principle is good and sound – does not apply to the construction of an exception or an exempting provision ; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals [1991] 83 STC 234 and other decisions, viz., each such exception/exemption increases the tax burden on other members of

the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave, Assistant Collector of Central Excise and Customs [1969] 2 SCR 253 ; AIR 1970 SC 755 that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."

9. In view of law laid down by the Hon'ble Supreme Court, rather reticent attitude of the SLSC persisting to refuse to issue the eligibility certificate under the Incentive Scheme to the assessee despite two rounds of litigation and two decisions from the higher appellate body, i.e. Tax Board directing the SLSC to issue the eligibility certificate rather reflects badly on the Revenue in the present case. The SLSC first took up a ground to refuse the benefit to the assessee on the ground that he did not satisfy the eligibility

criteria as it had not achieved 85% of the registered/licensed capacity as required in the Scheme. Even though the fact remains that the unit invested in instalments as many as 25344 spindles which was more than 100% of the previously registered capacity of 25000 spindles, though actually installed capacity of the unit was 18128 spindles in the first instance. The issue relating to installed capacity or registered capacity decided by this court in Super Syncotax's case (supra) thus could not furnish a reason to the SLSC to deny such benefit to the respondent assessee. However, later on when this controversy was settled by the Division Bench of this court in the case of Super Syncotex (India) Ltd. (supra) and this ground remained no more available to the SLSC, though there was no good reason for the SLSC to keep the matter pending for such a long period after the decision of the Tax Board in the first round of litigation by the assessee vide decision dated 01.08.1998 directing the SLSC to issue eligibility certificate

within two months, the SLSC not only kept the matter pending for around four years and even thereafter without any valid rhyme and reason, again chose to reject the case of the respondent assessee on 05.03.2002, this time adding the ground of rejection in the form of alleged default in the repayment of loans of RIICO and the State Government. While no details of such default were given in the impugned order dated 05.03.2002, which merely indicated that a sum of Rs. 55.15 lacs was due to be paid to RIICO and Rs. 11.69 lacs was due to be paid to the State Government against interest free loan. The said order even does not refer to clause 5(i) of the Scheme. Be that as it may, the question of invoking clause 5(i) of the Scheme would have arisen only if such eligibility certificate was granted to the respondent assessee in pursuance of the decision of the Tax Board and after affording an opportunity of hearing to the unit about the defaults in repayment of such loans. As rightly contended by the learned counsel for the

assessee, the purpose of clause 5(i) of the Scheme is not to defeat the very purpose of the Incentive Scheme itself. The said clause is merely an enabling provision having a deterrent value in that, to impress upon the eligible units that they should not commit the default in repayment of loans, else the very continuance of benefit under the Incentive Scheme may be at the peril of such default. It is not the condition precedent for grant of benefit under the Scheme that there should be no such default but it is an *ex post facto* condition, the violation of which invites a possible action against the industrial unit which is to be decided after complying with the principles of natural justice as indicated in the said clause 5(i) of the Scheme. The rejection of the case on 05.03.2002 by the SLSC invoking clause 5(i) of the Scheme in any manner cannot be held to be justified.

10. In view of the aforesaid, the Tax Board was justified in

again allowing the appeal of the assessee by the impugned order dated 21.07.2004 and directing for issuance of the eligibility certificate to the respondent assessee. Since the respondent assessee has already availed the benefit in pursuance of the decision of the Tax Board in its favour dated 01.08.1998, the same is held to be regularly availed benefit under the Incentive Scheme, 1989.

11. Consequently, this court finds no force in this revision petition of the Revenue. The same is accordingly dismissed with no order as to costs.

(Dr.VINEET KOTHARI),J.

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Item No. S4